IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1637 OF 2003

IN

SUMMARY SUIT NO.1983 OF 2003

Tata Motors Ltd. ..Plaintiff.

V/s.

Malabar Automobiles Pvt. Ltd. ..Defendant.

Ms.Chirag Balsara i/b. Mulla & Mulla for plaintiff.

Ms.Iyer i/b. Doijode & Phatarphekar for defendant.

CORAM : J.P.DEVADHAR, J.

DATED : 9TH DECEMBER, 2004.

P.C. :-

1. Heard counsel for both the sides.

2. This chamber summons is taken out by the defendant seeking condonation of delay of 80 days in entering the appearance on behalf of the defendant.

3. The learned counsel for the defendant submitted that the delay was due to bonafide error. He submitted that the plaintiff had filed Summary

Suit No.1946 of 2003 against the defendant and the Writ of Summons was served upon the defendant at their Cochin office on 4/8/2003. Immediately on receipt of the said summons, the officers of the defendant at Cochin contacted the Pune office and filed their appearance in the proceedings within the stipulated time.

4. Thereafter, when the writ of summons in Summary Suit No.1983 of 2003 filed by the plaintiff against the defendant was served on 19/8/2003, it was inadvertently considered to be the second writ of summons issued in Summary Suit No.1946 of 2003. It is only when the Summons for Judgment was served upon the defendant, the mistake was realised and steps have been taken to seek condonation of delay. In view of this inadvertent error, the learned counsel for the defendant submitted that the delay be condoned.

5. The learned counsel for the plaintiff strongly opposed the chamber summons and submitted that the suit numbers mentioned in both the writ of summons were totally different and, therefore, there was no reason to believe that the writ of summons served on 19/8/2003 pertained to the Summary Suit

No.1946 of 2003.

6. In my view, looking to the totality of the circumstances and looking to the facts set out in the affidavit in support of the chamber summons, it cannot be said that the defendant has not shown sufficient cause. In my view, the inconvenience caused to the plaintiff can be compensated in terms of money. Accordingly, in the facts and circumstances of the case, I think it is just and proper to condone the delay. Accordingly, the chamber summons is allowed in terms of prayer clause(a) with costs quantified in the sum of Rs.5,000/-. The defendant is directed to pay the said amount of Rs.5,000/- to the plaintiff within 2 weeks from today.

7. Chamber summons is disposed of accordingly.

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